

WEST VIRGINIA SUPREME COURT OF APPEALS

No. 33102

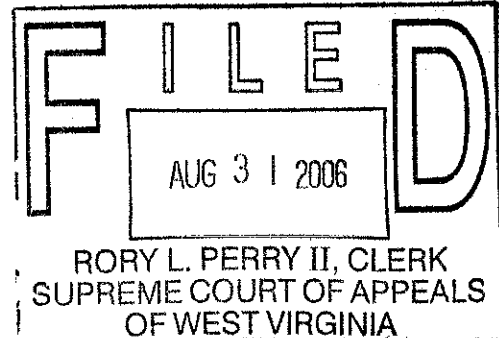
JOHN BARBINA, individually
and as parent of ANISSA BARBINA,
an infant,

Appellants,

vs .

CHARLES CURRY,
KELLEY A. CURRY,
THE WEST VIRGINIA DEPARTMENT
OF HEALTH AND HUMAN RESOURCES,
LORI GLOVER, CLARK SINCLAIR, as
Sheriff of Taylor County, West Virginia, and
VALLEY COMPREHENSIVE COMMUNITY
MENTAL HEALTH CENTER, INC.,

Respondents.



APPEAL FROM
THE CIRCUIT COURT OF
TAYLOR COUNTY, WEST VIRGINIA

REPLY BRIEF OF APPELLANTS TO CLARK SINCLAIR,
former Sheriff of Taylor County, West Virginia

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THE KIND OF PROCEEDING AND NATURE OF THE
RULING IN THE LOWER TRIBUNAL

This is an Appeal of an Order entered on the 20th day of September, 2005, by the Circuit Court of Taylor County, West Virginia, that awarding summary judgments to Lori Glover, Clark Sinclair, the now former Sheriff of Taylor County, West Virginia, the West Virginia Department of Health and Human Resources (hereinafter referred to as "the WVDHHR"), and Valley Comprehensive Community Mental Health Center, Inc., (hereinafter referred to as "Valley").

STATEMENTS OF FACTS

Appellants disagree with some of the facts set forth in the former Sheriff's reply brief. The main disagreement is that reading the brief it appears that counsel for the former sheriff is saying that the Taylor County Sheriff's Department was not a part of the investigatory multi-disciplinary team in Taylor County, West Virginia. That is factually incorrect as to the time frame that is being disputed. The Sheriff's Department and the WVDHHR both knew about Anissa Barbina being sexually abused by Charles Curry and about her being battered with the French kiss by Charles Curry between February 7-14, 2000. The multi-disciplinary team that was in existence from February of 2000 included a representative from the Taylor County Sheriff's Department, representatives from the WVDHHR, and the Taylor County Prosecutor. What happened is that the Taylor County Sheriff's Department did not do the follow through during this time frame and at the end of 2000 to the first part of 2001, the West Virginia State Police take over and bust the case open.

Factually stating that the Taylor County Sheriff's Department did not do the follow through during this time frame and at the end of 2000 to the first part of 2001 is based in part

upon the counter-affidavit of Heidi Barbina, Anissa Barbina's step-mother, who stated in applicable part as follows:

...
 3. I had my first contact with the Taylor County Sheriff's Department on or about December 1, 2000, when I inquired as to why nothing was taking place on Charles Curry and the Taylor County Sheriff's Department said they knew nothing about it.

4. I contacted Terry Tichenor, who represented John Barbina on the custody case concerning Anissa Barbina, and she agreed to write a letter to Lori Glover.

5. She received a copy of a letter Terry Tichenor allegedly sent to Lori Glover, which is attached hereto as Exhibit 1.

6. She maintains a calendar at her employment and she has the following entries on it with the following dates:

- a. 121500 Got copy of letter from CPS stating that Lori Glover did file a report with State Police
- b. 121900 Talked to Pros. Atty. Office John Borkd "No statement filed with State Police."
 Called Sheriff dept. "Don't have statement from CPS"

....
 (Bold face added).

It was also based in part on summaries the undersigned made of some of the depositions that had been taken, which was made into a counter-affidavit. The summary included Lori Glover's deposition, which included the following germane comments:

3. Lori Glover, who was the Child Protective Service worker for the West Virginia Department of Health and Human Resources, and who was on the investigative multi disciplinary team authorized by W. Va. Code, § 49-5D-2, was deposed on the 26th day of February, 2002, and during her deposition testified in summary form under oath to the following:

- a. Anissa's case was handled like this: referral was assigned to her on February 8th; on *(February)* 8th **she sent it to the Sheriff's office** (See page 10, lines 16-23);
- b. That **referral was sent by letter** (See pages 10-11, lines 24-1);
- c. ...;
- d. At that time if they knew the perpetrator lived in the city limits they sent the referrals to the city police; **if the**

- perpetrator lived outside the city limits they sent it to Dept; if they didn't know they automatically sent it to the Sheriff's Dept.(See page 11, lines 5-16);
- e. **Documentation to substantiate that the Dept. notified the Sheriff's office:** (1) Bonnie Nelson, receptionist social worker, documented that she sent the law enforcement a copy of the referral, on a different form and a cover letter; (2) FACTS automatically prints it in an abbreviated version; there is a form cover letter; (3) she also sent it to Bord; (4) she doesn't know if Nelson documented anywhere that she sent it to Bord and Sheriff; (5) she doesn't know if Nelson checked w/Bord or Sheriff to see if they received it (See pages 11-12, lines 17-14);
- f. It is **brought up at the investigative MDT meeting once a month** and her, her supervisor and Bord are present (See page 12, lines 15-25);
- g. Her supervisor then was Sharon Corley; **various officers from different agencies, state, county, and city would attend**; she doesn't recall who would have been attending back in 2000 (See page 13, lines 1-7);
- h. **An investigative MDT was held in connection with Anissa**; those MDT investigations were not documented at that time; they are now (See page 13, lines 8-15);
- i. ...;
- j. To her knowledge **disputes as to whether the prosecutor and police received the reports did not occur in the first 2-3 months of the Barbina case** (See pages 13-14, lines 22-4);
- k. The **investigative team was having problems on Anissa's case** and it was **reassigned to the State Police** (See page 14, lines 5-10);
- l. She **doesn't recall when it was reassigned to the State Police** (See page 14, lines 11-13);
- m. As to why it was sent to the State Police:
(1)She doesn't know what the underlying problem was
(2)She didn't suspect sabotage
(3)There were some cases not being tended to for awhile
(See page 14, lines 1-24);
- n. At each MDT meeting the Dept. would raise the case names involved; she's not sure what happened; **all those cases were sent to the State Police** (See pages 14-15, lines 25-5);
- o. **The cases that were sent to the state police had been**

- assigned to the County; she doesn't know who assigned the individual cases to the Sheriff's dept; there was more than one person showing up at the meetings; attendance was sporadic (See page 15, lines 6-24);
- p. **When asked if she thought the Sheriff's Department was dropping the ball, she said she felt that cases were not getting the attention they deserved** (See pages 15-16, lines 25-3);
- q. The Dept. would bring up the cases at the MDT meetings; then the cases were not tended to; she doesn't know what John Bord's position was; I would have to ask him (See page 16, lines 4-12);
- r. . . .);
- s. During an investigative meeting **Bord advised he was reassigning the cases to the state police**; Bord was just informing her supervisor he was reassigning to Ferguson (See page 16, lines 16-24); and
- t **With regard to the cases not getting well tended to through the Sheriff's department she knows there were three other cases of sexual abuse of children**, but she knows the abuse did not get repeated in one of those cases (See pages 71-72, lines 22-18)

(Bold face added).

4. **Sharon Corley, who was the Child Protective Service supervisor for the West Virginia Department of Health and Human Resources, and who was on the investigative multi disciplinary team** authorized by W. Va. Code, § 49-5D-2, was deposed on the 24th day of February, 2003, and during her deposition testified in summary form under oath to the following:

- a. **Glover's comments in her deposition that there were 3 cases that had fallen through the cracks, no MDT meetings held are accurate, and this includes Barbina** (See pages 29-30, lines 7-1);
- b. She does recall 2 cases besides Barbina (See page 30, lines 2-8);
- c. CPS-1's were sent to the police agency for the city, county, and in addition to the prosecutor (See page 30, lines 9-18);
- d. **From February 2000 when the report first came in about Anissa Barbina to December of 2000 when Ferguson first received the case to commence investigation she says that "is a significant amount of time"**(See page 36, lines 12-23);
- e. She does not recall the time elapsed from the CPS referral to when the police began handling the cases; **the state**

police were brought in on one; the case had stalled somewhere else but she doesn't remember where; the state police completed the case (See page 46, lines p-23);

(Bold face added).

It was also based in part upon the counter-affidavit of John Barbina, which said in applicable part as follows:

10. Terri Tichenor, John Barbina's domestic lawyer, complained to Lori Glover about nothing being done. John Barbina had enough and reported the case with his present wife to the Division of Public Safety. They obtained a confession from Charles Curry that led to the entry of his guilty plea to two counts of sexual abuse of a child, who was Anissa Barbina.

12. Anissa Barbina was damaged a little more with each day that she did not receive counseling and with each day she knew that Charles Curry remained free to possibly strike again.

13. John Barbina reported the sexual abuse to Sgt. Paul Ferguson of the Division of Public Safety, who looked for information concerning the incident, which had not been previously reported the sexual abuse of Anissa Barbina, and he commenced an investigation.

(Bold face added).

THE ASSIGNMENTS OF ERROR RELIED UPON
ON APPEAL AND THE MANNER IN WHICH THEY
WERE DECIDED IN LOWER TRIBUNAL

1. The trial court erred in granting Clark Sinclair, the now former Sheriff of Taylor County, West Virginia, a summary judgment;
2. The trial court erred in granting the WVDHHR a summary judgment; and
3. The trial court erred in granting Valley a summary judgment.

Each of these rulings was adverse to the appellants. Appellants objected to the trial court's rulings.

POINTS AND AUTHORITIES RELIED UPON

CONSTITUTIONS:

5th Amendment to the United States Constitution

14th Amendment to the United States Constitution

Article 3, § 10, of the West Virginia Constitution

STATUTES:

West Virginia Code, § 8-29B-4

West Virginia Code, § 15-2-12

West Virginia Code, § 29-12A-5

West Virginia Code, § 49-5D-2

CASES:

Brandon Lee, In Re: H.S. 32872 (030106 Berkeley County)

Wolfe v. City of Wheeling, 182 W.Va. 253, 387 S.E.2d 307 (W.Va. 1989)

DISCUSSION OF LAW

A. Former Sheriff is Not Immune

Former Sheriff Sinclair indicates he is immune from suits pursuant to West Virginia Code, § 29-12A-5(b) unless

(1) his or her acts or omissions were manifestly outside the scope of employment or official responsibilities.

In connection with this argument, former Sheriff Sinclair states on page 7 of his reply brief

If indeed, Sheriff Sinclair had been notified of the alleged sexual abuse of Anissa Barbina, then any acts or failure to act would fall within his scope of employment and official responsibilities as a Sheriff of Taylor County to participate in the investigation of the alleged sexual abuse as designated in West Virginia Code

§49-5D-2 as he may be directed by the Prosecuting Attorney.

John Barbina submitted an affidavit that he had talked to a Deputy on or about February 14, 2000, and explained what had happened to his daughter. His counter affidavit said in applicable part as follows:

6. On February 14, 2000, he reported to the Sheriff's Department of Taylor County, West Virginia, that Charles Curry had sexually abused Anissa Barbina and they advised that they had nothing on file and referred him to the Taylor County Magistrate Court;

Lori Glover at her deposition in a summarized form said,

- a. Anissa's case was handled like this: referral was assigned to her on February 8th; on *(February)* 8th **she sent it to the Sheriff's office** (See page 10, lines 16-23);
- b. That **referral was sent by letter** (See pages 10-11, lines 24-1);

Lori Glover at her deposition in a summarized form said,

- n. At each MDT meeting the Dept. would raise the case names involved; she's not sure what happened; **all those cases were sent to the State Police** (See pages 14-15, lines 25-5);
- o. **The cases that were sent to the state police had been assigned to the County**; she doesn't know who assigned the individual cases to the Sheriff's dept; there was more than one person showing up at the meetings; attendance was sporadic (See page 15, lines 6-24);
- p. **When asked if she thought the Sheriff's Department was dropping the ball, she said she felt that cases were not getting the attention they deserved** (See pages 15-16, lines 25-3);
(Bold face added).

There was evidence in what was submitted to the trial court judge that employees of the former sheriff were on the investigatory multi-disciplinary team pursuant to West Virginia Code, §49-5D-2. The former sheriff's deputies were not doing their job, which may have been because they were not being paid to do it.

The motto of the police is to "protect and serve" the public. This essence of the statute is sometimes included in the West Virginia Code. For instance, West Virginia Code, § 15-2-12(a) provides in applicable part as follows:

The West Virginia state police shall have the mission of statewide enforcement of criminal and traffic laws with emphasis on providing basic enforcement and citizen protection from criminal depredation throughout the state and maintaining the safety of the state's public streets, roads and highways.

Another example is in West Virginia Code, § 8-29B-4(a), which provides in applicable part as follows:

To enforce any federal or state law or rules and regulations relating to airports and airport security and any rules and regulations promulgated by the airport operator, to protect air passengers, airport personnel, aircraft and the airport and to preserve law and order in connection therewith, the airport operator shall have plenary power and authority to make arrangements for one or more airport police officers, pursuant to the provisions of subsections (b) and (c) of this section.

Under W. Va. Code, § 49-5D-2, the Sheriff's office had a duty

... for coordinating or cooperating in the initial and ongoing investigation. . . . and shall make a recommendation to the county prosecuting attorney as to the initiation or commencement of a civil petition and/or criminal prosecution.

Doing nothing on Anissa Barbina's case for the approximately ten months violated that duty.

This Court stated in *Brandon Lee, In Re*: H.S. 32872 (030106 Berkeley County):

Numerous statutes evidence the paramount importance that we attach to protecting and safeguarding this state's children from abusive and neglectful environs.

From Lori Glover's deposition summaries, it is apparent that Anissa Barbina's case was assigned to the Sheriff's Department within the multi-disciplinary team because the then alleged (now proven) offenses were committed outside of Grafton, her name was brought up monthly, and

nothing was done. The Good Samaritan story provides two types of wrongs. Those of commission by the robbers and thieves; those of omission by the priest and Levite who walked on by to let the victim continue hurting with untreated wounds that might not properly heal without intervention. Here, the former Sheriff's employees did not coordinate or cooperate or recommend. Doing nothing on Anissa Barbina's case that was brought to the attention of the former Sheriff's employees and letting her case slide through the cracks is an error of omission that is "... manifestly outside the scope of employment or official responsibilities." They were put in a special job to protect special kids, like Anissa Barbina. They damaged the kids they were to protect and serve. Sharon Corley said it was a significant amount of time that went by.

Article 3, § 10, of the West Virginia Constitution, which provides as follows:

§ 10. Safeguards for Life, Liberty and Property

No person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers.

This is similarly provided in the Fifth and Fourteenth Amendments to the United States Constitution. It is up to a jury, not a Judge, to determine if "his or her acts or omissions were manifestly outside the scope of employment or official responsibilities."

B. Former Sheriff had a Special Relationship

The appellants rely on what was in their brief as to the special relationship, which shows the evidence to support the four elements of

(1) an assumption by the local governmental entity, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on the part of the local governmental entity's agents that inaction could lead to harm; (3) some form of direct contact between the local governmental entity's agents and the injured party; and (4) that party's justifiable reliance on the local governmental entity's affirmative undertaking.

Syllabus Point 2 of *Wolfe v. City of Wheeling*, 182 W.Va. 253, 387 S.E.2d 307 (W.Va. 1989)

They incorporate the same herein.

The former sheriff argues that it was the State Police that was designated to investigate Charles Curry. This designation did not come until at least December of 2000 after the Sheriff's employees failed to do anything to protect Anissa Barbina from at least mid February of 2000. The response herein by appellants to the former sheriff's statement of facts is incorporated herein by reference. To say that appellants do not dispute that it was not the former sheriff's job to coordinate or cooperate in the initial and ongoing investigation of Anissa Barbina's allegations of sexual assault or child sexual abuse and to make a recommendation to John Bord as to the initiation or commencement of a criminal prosecution is factually incorrect.

The former sheriff fails to see that his omitting to investigate Anissa Barbina's allegations that his department was to be doing, as a part of the West Virginia Code, § 49-5D-2 membership, from at least mid February of 2000 to December of 2000 can cause harm to Anissa Barbina. The investigation by the former sheriff, who is to protect and serve, could have afforded Anissa Barbina relief from her fear of being attacked again by her grandfather who was nearby.

Besides the former sheriff's employee hearing out Anissa Barbina's father concerning the facts of sexual abuse and battery and making a recommendation to her dad, the former sheriff's employee(s) were a part of the West Virginia Code, § 49-5D-2 membership from at least mid February of 2000 to December of 2000 that was to be handling Anissa Barbina's case. The former sheriff wants to claim ignorance that inaction could lead to harm to Anissa Barbina. This was a special task force to protect specific mistreated children. There were to be monthly meetings with the prosecutor and the WVDHHR. The former sheriff's office employees

transport those being possibly involuntarily committed to and from hearings and are hanging out while arrangements are made. To profess ignorance that inaction could lead to harm defies logic. He states he had no contact with her or her family, but that is disputed by the affidavit of the father of Anissa Barbina who says he talked to the former sheriff's employees, which led to direct contact with Lori Glover at a magistrate case hearing day in February of 2000, which was for protection of Anissa Barbina.

C. Anissa Barbina was Damaged by Former Sheriff

Again, the Good Samaritan story provides two types of wrongs. Those of commission by the robbers and thieves; those of omission by the priest and Levite who walked on by to let the victim continue hurting with untreated wounds that might not properly heal without intervention. The former Sheriff in essence argues: "... but I did not find out until the "perp" was finished "perping", so I should not be liable for not protecting and serving her by not coordinating or cooperating in the initial and ongoing investigation and making a recommendation to the county prosecuting attorney to help stop or ease her fear." Her wounds were mental. Her mental injury includes the fear that the "perp" will return to "perp" her more.

Article 3, § 10, of the West Virginia Constitution and the Fifth and Fourteenth Amendments to the United States Constitution provide due process rights and jury trial rights for persons, which includes Anissa Barbina. The person of Anissa Barbina is comprised of her body, mind, and spirit (with the latter based on the faith of most people). Mental damages includes fear, which is the core of most people's neurosis(es). The father and custodian of Anissa Barbina had in his counter-affidavit that:

12. Anissa Barbina was damaged a little more with each day that she

did not receive counseling and with each day she knew that Charles Curry remained free to possibly strike again.
(bold face added).

and he provided graphic evidence to support what raised his initial concerns that his daughter was a sexual abuse victim at page 37 of his deposition:

7 A. I just remember just basically, in
8 **thinking back on some of the bedwetting and the**
9 **soiling of the pants and some of the other things that**
10 **I witnessed in the past, I just pretty much went**
11 **straight for the something sexual thing, I just went**
12 **ahead and straight-out asked her.**

(Bold face added).

Appellants provided extensive testimony from the deposition of Helen Jean Lough to show the damages that sexual abuse victims, such as Anissa Barbina, can have. A fair reading of what John Barbina had to say in conjunction with what Helen Jean Lough, who is/was a therapist for Valley supports a clear inference that Anissa Barbina was damaged. Appellant was not given the benefit of that inference by the trial court. Appellants brought these to the attention of the trial judge in counter-affidavits to the summary judgment motions. Damages were sufficiently established to avoid a summary judgment.

For a judge to say she is not mentally damaged steals her constitutional due process rights and jury trial rights for her deprivation of a life free of her mental damage from the sexual abuse and battery. For a judge to say she is not mentally damaged steals her constitutional due process rights and jury trial rights for her deprivation of her liberty to obtain whatever employment she might have been able to pursue without the layer of mental damage from the sexual abuse and battery that can impair her ability to strive in school to achieve the fundamentals necessary for certain jobs and can impair the development of social skills for properly interacting at her place

of employment.

The former sheriff says damages were not raised in the pleadings. Paragraphs 19, 22, and 26 to 28 of the amended complaint and second amended complaint state in part as follows:

19. As a result of the negligence of Clark Sinclair, Sheriff of Taylor County, West Virginia, and/or his employees in failing to investigate the report of Anissa Barbina being sexually assaulted and/or abused and battered and/or as a result of the negligence of the West Virginia Department of Health and Human Resources, no report was filed by Child Protective Services of the West Virginia Department of Health and Human Resources with local law enforcement authorities.

...
22. Pursuant to West Virginia Code § 49-5D-2, there exists in Taylor County, West Virginia, a multidisciplinary investigative team; between February 7, 2000, and December of 2000, the members of the multidisciplinary investigative team included a member of the law enforcement division of the Sheriff of Taylor County, West Virginia, which is overseen by Clark Sinclair, Sheriff of Taylor County, West Virginia, and "... a local child protective services caseworker from ..." who was Lori Glover from the West Virginia Department of Health and Human Resources; as a result of the negligence of either Lori Glover, the West Virginia Department of Health and Human Resources, and/or a member of the law enforcement division of the Sheriff of Taylor County, West Virginia, who is overseen by Clark Sinclair, Sheriff of Taylor County, West Virginia, there was no

... coordinating or cooperating in the initial and ongoing investigation of all civil and criminal allegations pertinent to cases involving child sexual assault, child sexual abuse, child abuse and neglect,

and no

... recommendation to the county prosecuting attorney as to the initiation or commencement of a civil petition and/or criminal prosecution

as required by § 49-5D-2(c) as to the case of Anissa Barbina, which had been the subject of a child protective services referral to the West Virginia Department of Health and Human Resources on February 7, 2000, until approximately December of 2000 and the failure to coordinate, cooperate, and recommend to the county prosecutor for cases involving child sexual assault, child sexual abuse, child abuse and neglect to some other children's cases that were under referral.

...
26. A special relationship existed between the plaintiff and the West Virginia Department of Health and Human Resources and/or Clark Sinclair,

Sheriff of Taylor County, West Virginia, which gives rise to a duty to Anissa Barbina, which duty was to protect Anissa Barbina, to obtain her healthcare for the sexual contact, and to keep plaintiffs advised as to the progress of the investigation and the duty was breached causing injuries because Anissa Barbina was kept at high risk of further sexual assault and/or abuse by Charles Curry, Anissa Barbina was kept with a neglectful person, Anissa Barbina was kept from receiving sufficient health care treatment, Anissa Barbina was kept in a state of fear from there being no legal intervention against Charles Curry, and John Barbina incurred additional legal fees, costs, and/or expenses.

27. As a direct and proximate result of one or the other or all of the defendant's actions and/or inactions, Anissa Barbina suffered the following damages:

- a. she has suffered much pain and suffering of body and mind (past, present, and future);
- b. she has suffered a diminished capacity to labor because her school work suffered and her view of herself has been altered in a negative fashion;
- c. she is permanently psychologically scarred;
- d. she suffered much humiliation, great indignities and much embarrassment;
- e. she has experienced a reduction in her capacity to enjoy life and carry out her ordinary physical and mental activities;
- f. she has been inconvenienced (past, present, and future);
- g. she received gratuitous services (past, present, and future);
- h. she has been disabled in her ability to communicate, socialize, advise, comfort, and consort with her father, step-mother, and half siblings; and
- i. she has been otherwise injured.

28. As a direct and proximate result of one or the other or all the defendants' actions and/or inactions, John Barbina has been injured in that Anissa Barbina's injuries have been such and will be such that he has been and will be in the future deprived of his daughter's companionship, society, advise, comfort and consortium, has suffered the following damages:

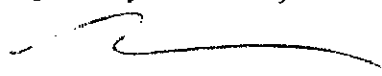
- a. he has lost wages and benefits;
- b. he has incurred health care expenses for Anissa Barbina;
- c. he will incur future health care expenses for Anissa Barbina and probably himself;
- d. he or his household will lose future wages and/or employment benefits;
- e. he will incur future transportation expenses;
- f. he has suffered much pain and suffering of body and mind (past, present, and future);
- g. he has experienced a reduction in his capacity to enjoy life and carry out his ordinary physical and mental activities; and
- h. he has been otherwise injured.

The former sheriff answered the amended complaint on or before July 5, 2002. Appellants are presently unsure if the former sheriff answered the second amended complaint.

RELIEF PRAYED FOR

Appellants prays that this Honorable Court reverse the decision of Taylor County concerning awarding summary judgment to Clark Sinclair, the now former Sheriff of Taylor County, West Virginia.

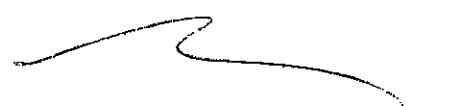
Respectfully Submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served on each of the attorneys of record of all parties to the above-styled cause by enclosing the same in an envelope addressed to each such attorney and/or party, if a party has filed pleadings and is not represented by counsel, at his or her respective address as disclosed by the pleadings a record herein and set forth below, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Grafton, West Virginia, on the 31st day of August, 2006, as set forth below:



LaVerne Sweeney
WV Bar ID #3671

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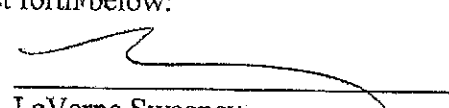
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The undersigned hereby certifies that a true copy of the foregoing instrument was served on each of the attorneys of record of all parties to the above-styled cause by enclosing the same in an envelope addressed to each such attorney and/or party, if a party has filed pleadings and is not represented by counsel, at his or her respective address as disclosed by the pleadings a record herein and set forth below, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Grafton, West Virginia, on the 31st day of August, 2006, and by faxing such on the same day to each such attorney and/or party, if a party has filed pleadings and is not represented by counsel to his or her fax number as set forth below:



LaVerne Sweeney

WV Bar ID #3671

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